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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,410	02/07/2002	Udo Bickers	514413-3911	1061

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EXAMINER	
PRYOR, ALTON NATHANIEL	

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/049,410	BICKERS ET AL.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *17 March 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *14,15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *14,15,17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Claim rejections under 35 USC 102(b) as being anticipated by Narayanan and Sanders will be maintained for reason on record and reason as follows. Claim 18 has been added to Narayanan's 102(b) rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14,15,17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Narayanan et al (US 5231070; 7/27/93). Narayanan teaches a method of applying a composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, or diquat (post emergent herbicides) plus a methacrylate type polymer. Narayanan teaches that the composition is applied to the soil in a pre-emergent application. See abstract, column 2 line 64 – column 4 line 47. Claim 18 is added because Narayanan teaches a method of applying a composition comprising glyphosate or bialaphos plus a methacrylate polymer pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches that a mixture of crop treating chemicals can be employed. See column 15 lines 16-30. The person of ordinary skill in the art would immediately envision that the prior art methodology would be employed to treat any

plant, which are non-genetically modified as well as plants, which are genetically modified. . Applicant argues that Narayanan does not anticipate "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "a method of inhibiting the leaching of an active plant growth regulating agrichemical". Examiner argues that Narayanan does anticipate the instant invention. Firstly, Narayanan teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 lines 64-66. Examiner also argues that post-emergent herbicides such as glyphosate, and bilanafos can be added to the composition. See column 4 lines 20-32. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Narayanan teaching "a method of inhibiting the leaching of an active plant growth regulating agrichemical," Examiner points out that the inhibition of leaching means the prevention of the agrichemical from moving from the site of application. Examiner argues that this teaching does not change the composition taught by Narayanan or the active step of application of the composition taught by Narayanan. The instant composition comprising a post-emergent herbicide plus acrylic polymer is taught by Narayanan. Narayanan also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Applicant argues that Narayanan also does not make the instant invention inherent. Examiner disagrees with Applicant since both Narayanan's invention and instant invention teaches the same active step of applying a composition comprising a

post-emergent herbicide plus an acrylic polymer pre-emergently. See column 2 line 64 – column 3 line 23, column 4 lines 20-32.

Applicant argues that claim 17 is not anticipated by Narayanan. Applicant argues that Narayanan discloses "broad recitations regarding the nature of carrier material such as they can be viewed as encompassing of polymers based on acrylic acid or methacrylic acid." Applicant argues that Narayanan refers to a broad genus of alternative carriers preferably N-alkenyl lactam homopolymers. Examiner argues that broad claims can be anticipated by a broad teaching in the art. Note that instant claims comprise a Markush group consisting of polymer genus serving as carriers. Because of the broad list of carriers disclosed by the instant claims, it is reasonable to use a broad teaching of the carriers in the art to reject such broad claims. While it is true that Narayanan does disclose that N-alkenyl lactam homopolymers are preferred carriers, it is not necessary that Narayanan teaches an acrylic polymer in an example or as a preferred polymer in order to anticipated the instant invention. It is critical to note that the instant claims are broad and therefore it would be proper to use a broad teaching to anticipate the instant claims.

Applicant argues that Narayanan does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide is the same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan. Examiner argues that Narayanan teaches a composition comprising 10%

post-emergent herbicide and 10% polymer. See column 7 lines 60-68. Note that instant specification discloses that the amount of post-emergent herbicide in the composition can range from 0.001 to 48%. See instant specification page 3 lines 26-31. Since the 10% post-emergent herbicide taught by Narayanan falls within the 0.001 to 48% post-emergent herbicide range disclosed by instant specification, it can be concluded that effective amount of post-emergent herbicide used in the instant invention is the same as the effective amount of post-emergent herbicide used to inhibit leaching as in Narayanan. Note that Narayanan's effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Narayanan, one of ordinary skill in the art would have been motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Narayanan anticipates the application of agrichemicals pre-emergently. Narayanan also teaches that the agrichemical include herbicides such as glyphosate and bilanafos which are post-emergent herbicides. See column 2 line 64 – column 3 line 23, column 4 lines 20-46. See also instant specification page 3 line 35.

Claims 14,15,17,19,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanders (US 5635447; 6/3/97). Sanders teaches a method of applying a composition comprising atriazine (post emergent herbicides) plus a polyacrylic acid polymer. Sanders teaches that the composition is applied to the soil (a pre-emergent application). See abstract, column 2 line 36 – column 3 line 18.

Applicant argues that Sanders does not anticipated "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "enhancing the absorption/penetration of an herbicide into a plant cell/tissue". Examiner argues that Sanders does anticipate the instant invention. Firstly, Sanders teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 line 36 – column 3 line 18. Examiner also argues that to the composition is added post-emergent herbicides such as glyphosate, and atrazine. See column 1 lines 10-41, column 2 lines 19-31. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Sanders' teaching "enhancing the absorption/penetration of an herbicide into a plant cell/tissue," Examiner points out that the enhancing absorption/penetration is to the prevention of the agrichemical from moving from the site of application. Examiner argues that this teaching does not change the composition taught by Sanders or the active step of application of the composition taught by Sanders. The instant composition comprising a post-emergent herbicide plus polyacrylic acid is taught by Sanders. Sanders also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 36 – column 3 line 18. Applicant argues that Sanders also does not make the instant invention inherent. Examiner disagrees with Applicant since both Sanders' invention and instant invention teaches the same active step of applying a composition comprising a post-emergent herbicide plus polyacrylic acid pre-emergently. See column 2 line 36 – column 3 line 18.

Applicant argues that claim 17 is not anticipated by Sanders. Applicant argues that Sanders discloses "broad recitations regarding the nature of carrier material such as they can be viewed as encompassing of polymers based on acrylic acid or methacrylic acid." Applicant argues that Sanders refers to a broad genus of alternative carriers preferably polyaspartic acid. Examiner argues that broad claims can be anticipated by a broad teaching in the art. Note that instant claims comprise a Markush group consisting of polymer genus serving as carriers. Because of the broad list of carriers disclosed by the instant claims, it is reasonable to use a broad teaching of the carriers in the art to reject such broad claims. While it is true that Sanders does disclose that polyaspartic acid is the preferred carrier, it is not necessary that Sanders teaches an acrylic polymer in an example or as a preferred polymer in order to anticipate the instant invention. It is critical to note that the instant claims are broad and therefore it would be proper to use a broad teaching to anticipate the instant claims.

Applicant argues that Sanders does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide is the same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan. Examiner argues that Sanders' effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Sanders, one of ordinary skill in the art would be motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Sanders anticipates the application of agrichemicals pre-emergently. Sanders also teaches that the agrichemical include herbicides such as glyphosate and atrazine, which are post-emergent herbicides. See column 1 lines 10-41, column 2 line 19 – column 3 line 18.

With respect to the Declaration unexpected data is presented for post-emergent herbicide (paraquat, glyphosate) being used pre-emergently. However, the claims are much broader than the scope of results presented in the examples. Also, examples in Declaration do not specify carriers as recited in claims.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alton Pryor
Primary Examiner
AU 1616